

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

IN THE MATTER CONCERNING
JUDGE JAMES M. BROOKS

DECISION AND ORDER IMPOSING
PUBLIC ADMONISHMENT

This disciplinary matter concerns Judge James M. Brooks, a judge of the Orange County Superior Court. Judge Brooks and his counsel, Edward P. George, Jr., have stipulated to issuance of this public admonishment, as set forth in a Stipulation for Imposition of Public Admonishment. Pursuant to stipulation, and good cause appearing, the Commission on Judicial Performance issues this public admonishment pursuant to article VI, section 18, subdivision (d) of the California Constitution, based on the following Statement of Facts and Reasons:

STATEMENT OF FACTS AND REASONS

Judge Brooks was elected to the Orange County Municipal Court on November 4, 1986 and began serving on January 5, 1987. He served as assistant presiding judge of the municipal court in 1991 and as presiding judge in 1992. In 1998, he was elevated to the Orange County Superior Court by unification.

The matters which caused the Commission on Judicial Performance to issue its preliminary investigation letter on August 16, 2007 all concern Judge Brooks's conduct while presiding over the jury trial in the case of *Haluck v. Ricoh Electronics, et al.* (No. 03CC10166). The *Haluck* trial, which was held from January 3 to March 1, 2005, involved a claim by James Haluck and Michael Litton against Ricoh Electronics

for employment discrimination. After the jury returned a verdict for the defense, the plaintiffs appealed on the grounds that Judge **Brooks's** misconduct so infected the proceedings they were deprived of a fair trial. The appellate court concluded that Judge Brooks's conduct was sufficiently egregious and pervasive that a reasonable person could doubt whether the trial was fair and impartial. Accordingly, the appellate court reversed the judgment and remanded the case with directions that it be assigned to a different trial judge for retrial. (*Haluck v. Ricoh Electronics, Inc.* (2007) 151 Cal.App.4th 994.)

Judge Brooks committed the following misconduct While presiding over the *Haluck* trial:

1. **"Overruled" Signs**

During the trial, Judge Brooks overruled one of plaintiffs' objections and held up a hand-lettered sign, prepared by him, stating "overruled." The next day, when the court overruled another of plaintiffs' objections, defense counsel **Callahan** presented the judge with a different sign, stating: "Your honor, I want to help **you** if I may. This is a much nicer version." The following exchange then occurred between Judge Brooks and plaintiffs' counsel Reinglass:

The Court: Better than my homemade one.

Ms. Reinglass: Plaintiffs object to Mr. Callahan presenting another 'overruled' sign to the court. The court's sign was adequate enough.

The Court: The court will await receiving a 'sustained' sign from plaintiff[s] so we can split the benefits here.

Ms. Reinglass: How many do I get?

(2/03 R.T. 3277:13-20.)

A week later, after Judge Brooks used **Callahan's** "overruled" sign, Reinglass objected, Judge Brooks responded, "It's lightening things up."

The appellate court found that the use of the sign “was a sideshow in the overall circus atmosphere mocking a serious proceeding important to the parties, and it ‘cast the judicial system itself in a bad light in the eyes of the litigants and the public at large.’” (*Haluck v. Ricoh*, *supra*, 151 Cal.App.4th at p. 1004, citing *Hernandez v. Paicus* (2003) 109 Cal.App.4th 452, 455.)

The use of the sign and the adopting of defense counsel's sign for its acknowledged entertainment value, belittled plaintiffs' objections, and violated canons 1 (failing to observe high standards of conduct), 2A (failing to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary), 3B (3) (failing to require order and decorum in the proceedings), and 3B (4) (failing to be patient, dignified and courteous).

2. The Twilight Zone

In testifying as to his emotional stress, plaintiff Litton said that he had felt like he was in a white room without doors or windows that had no boundaries. On cross-examination, the following exchange took place:

By Mr. Callahan: Have you ever heard of The Twilight Zone?

A. [by Mr. Litton]: Yes, sir.

Q. Goes kind of like this, do do, do do.

Ms. Reinglass: Your Honor, I would just object. This is argument.

The Court: Your objection's on the record, ma'am.

Ms. Reinglass: Also improper argument.

Mr. Callahan: You're traveling through another dimension, a dimension not only of sight and sound, but of mind, a journey into a wondrous land, whose boundaries are that of imagination[;] that's a sign post up ahead, your next stop, The Twilight Zone. Do do, do do. Do do, do do.

The Court: That was terrible. Get to the **question**, please.

Ms. **Reinglass**: Noting for the record, counsel was singing The Twilight Zone theme song.

The Court: And how the jurors left it will be reflected on [the] same record.

By Mr. **Callahan**: Q. Endless white room with no doors or windows. [¶] Is that where you got your idea of this white room **theory**?...

ra...ra

A. From where?

The Court: Twilight Zone. That's his question.

The Witness: No, sir.

Mr. Callahan: **Do do, do do. Do do, do do.**

Ms. Reinglass: I request that counsel stop singing. As entertaining as it is for the jury, **it's** mocking my client and mocking the trial.

By Mr. Callahan: Q. Ever heard of The Twilight Zone, the show?

A. Yes, sir.

The Court: For the record, he hit a few notes of The Twilight Zone theme song which I don't see as mocking. He was off color [sic].

Mr. Callahan: I go through life tone deaf and colorblind. **This** is tough.

(Vol. 16R.T. 3168:14-3170:6.)

Although some of these comments were counsel's, the judge encouraged many of them; he gave defendants' lawyer free rein to deride and make snide remarks at will

and at the expense of plaintiff Litton. This violates canon 3B(3) which provides that judges "shall require order and decorum in proceedings."

3. Comments During the Reading of Stevenson Deposition/Litton Examination

During defense counsel Callahan's cross-examination of plaintiff Litton, Judge Brooks allowed Callahan to read approximately 30 pages of the deposition of a former Ricoh employee (Rhonda Stevenson), over numerous objections from plaintiffs' counsel Reinglass. During this part of the trial, Judge Brooks made a number of inappropriate comments:

A. At one point, Reinglass asked to "have a running objection until I add anything new." Judge Brooks responded, "That would help. Same objection that's been going on all day will be deemed to be made to every question and every answer throughout time." Reinglass then stated, "There may be some I like." The judge's response was: "With the same ruling. Well, until I die. Same ruling. Okay." (R.T. Vol. 14 at 2900:11-18.)

B. The next day, as defense counsel continued to cross-examine Litton using the Stevenson deposition, Reinglass objected, and the following exchange occurred:

The Court: Overruled. Objection, 187.

Ms. Reinglass: Huh?

The Court: I got a number for all of these things.

Mr. Callahan: 187 in the Penal Code, what is that, Your Honor?

The Court: Murder.

(Vol. 15 R.T. 2963:26-2964:5.)

C. In another instance, when Litton was testifying that he was discriminated against because of his race, Reinglass asked: "And did you feel that it was based upon your race because of comments by [defendant] Mr. Nomura?" The court sustained Callahan's objection (leading). Reinglass then rephrased, asking, "Was there any other reason why you felt that it was based upon your race?" When Litton answered, "And due to the comment by Nomura," Callahan stated, "What a surprise," and Judge Brooks remarked, "Aren't they clever." "(Laughter)." (Vol. 13 R.T. 2692:25-2693:8.)

D. After a question by Reinglass, Callahan stated, "Objection. Gosh, what is that?" The judge responded, "What is it?" Callahan responded, "Hearsay." The judge overruled the objection and Callahan said, "How about -[.]" Judge Brooks's reply was, "No. Go back to sleep." Callahan responded, "Wake me when it's break time." Judge Brooks told him it was very close. (Vol. 17 R.T. 3409:20-3410:2.) Later that day, when Callahan objected, Judge Brooks stated, "Don't wake him up," to which Callahan replied, "Hey, I don't get a lot of sleep." (Vol. 17 R.T. 3444:9.11.)

The comments "until I die," "murder" and "187" made it clear that the court had no use for the objections. While these comments may have been humorous to the judge and defense counsel, humor should not be used to belittle litigants or their counsel. The "Aren't they clever" comment disparaged Litton's testimony and implied he was not telling the truth and that his lawyer was trying to sneak in otherwise inadmissible evidence. A trial court must avoid comments that convey to the jury the message that the judge does not believe the testimony of the witness. The "No. Go back to sleep" and the "Don't wake him up" comments belittle the seriousness of the proceedings. Judge Brooks's comments violate canons 1 (failing to observe high standards of conduct), 2A (failing to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary) and 3B(4) (failing to be patient, dignified and courteous) and constitute misconduct.

4. The Soccer Cards

During the trial, Judge Brooks advised his clerk, "Jeffrey, we're going to the soccer style method here. Red card, 50 bucks each. Okay. If I say, red card plaintiff, write it down, 50 bucks. Red card defense, 50 bucks. ft}] We'll keep a running tab. End of trial, we'll collect it from them and we may take you guys [the jury] to lunch at a very nice place...." (Vol. 17 R.T. 3358:15-21.) Further mention of red cards took place intermittently following objections by the defense over the course of 40 pages of transcript. At one point, when plaintiffs' counsel stated she was reading the last portion of a deposition, Callahan stated, "Very good.... I probably shouldn't say very good. No objection." The judge responded, "That's an orange card, not a red card." (Vol. 17 R.T. 3378:3-8.) The Court of Appeal found that the "soccer-style" red card procedure was "glaringly inappropriate" and violated the requirement of judicial decorum. The appellate court noted that a "trial is not a sporting event." (*Haluck v. Ricoh, supra*, 151 Cal.App.4th at 1005-06.) Judge Brooks's use of "soccer cards" violated canons 1 (failing to observe high standards of conduct), 2A (failing to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary) and 3B(4) (failing to be patient, dignified and courteous).

Judge Brooks's comments and actions during the *Haluck* trial were prejudicial to the administration of justice and constituted misconduct within the meaning of California Constitution, article VI, section 18, subdivision (d).

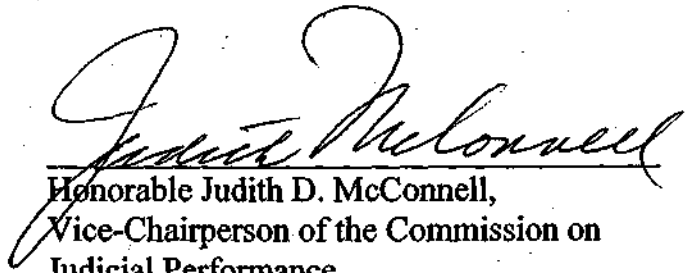
In determining that a public admonishment was appropriate, the commission noted that Judge Brooks has previously been disciplined for conduct similar to that set forth above. In 1996, Judge Brooks received an advisory letter addressing, in part, the judge's comments reflecting ethnic bias: referring to Hispanic defendants as "Pedro"; issuing a bench warrant for an Asian defendant for "ten thousand dollars or twenty thousand yen"; and stating to an undocumented Hispanic defendant, "[y]ou have more names than the Tijuana telephone book." In 1999, Judge Brooks received another advisory letter for remarks to a defendant at the conclusion of a preliminary hearing

about how the judge would have handled an assault on a member of his own family: "I would go down and punch [the defendant's] lights out," and that instead of calling the police, it would be, "touch them, you die." In 2003, Judge Brooks received a private admonishment for conduct including referring to the parties in a case, the operators of a mobile home park, as "Nazis" and analogizing their actions to that of the Nazis during the Holocaust. In another matter also included as a basis for the private admonishment, in the course of denying plaintiff's motion to exclude reference to his status as an undocumented alien, Judge Brooks made remarks conveying his stereotypes of undocumented aliens, including that they place burdens on taxpayers by receiving benefits to which they are not entitled. The judge referred to the defendant's physician as "this good doctor." The appellate court reversed Judge Brooks's ruling in that case, and based its reversal in part on the appearance of bias. (*Hernandez v. Paicius* (2003) 109 Cal.App.4th 452.) In 2006, Judge Brooks received a public admonishment for conduct including telling a litigant who claimed to have failed to appear for his deposition due to a heart condition, "I wonder what's going to happen when we put you in jail, Mr. McMahon. Your little ticker might stop, you think?" Later, after imposing a fine on Ms. McMahon, Judge Brooks stated, "I'd mention jail but it might give her a heart attack." (*Palacio Del Mar Homeowners Assoc. v. McMahon*, No. 01CC14684.) The 2006 public admonishment was also based on comments Judge Brooks made during a hearing in the case of *Vinci Investments Co., Inc. v. Joher, et al.*, No. 04CC04522.) Defendant Joe Joher had allegedly transferred business property into his mother's and his wife's name instead of transferring it to plaintiff. Referring to the mother, Judge Brooks stated that, "... a lady that, in her own country – I put a question mark; I know it's Syria, Iraq, Iran, Lebanon - probably a very nice lady, probably doesn't know how much she owns, I don't think." Later, Judge Brooks stated that defendant Joher transferred, "much of the business/property into the name of defendant 'Joe' Joher's wife, who, in her native Syria (?) probably wouldn't be allowed to own property." The commission found that Judge Brooks's conduct in the *Vinci* and the *Joher* cases violated canons 2A, and 3B(4).

The commission's determination to resolve this matter with a public admonishment and to forego formal **proceedings** and the possible imposition of higher discipline was conditioned upon Judge Brooks's agreement to retire from the bench and not to seek or hold judicial office and not to seek or accept judicial **assignment**.¹ In the commission's **view**, this result **adequately** protects the public from any future misconduct.

Commission members Justice Judith D. **McConnell**, Honorable **Katherine Feinstein**, Mr. Peter E. Flores, Jr., Ms. Barbara **Schraeger**, Mr. Lawrence **Simi**, Ms. Maya **Dillard Smith**, Ms. Sandra **Talcott** and Mr. Nathaniel Trives voted for a public admonishment. Commission members Marshall B. Grossman and Mr. Samuel A. **Hardage** did not participate. Commission chairperson Honorable Frederick P. Horn is recused.

Dated: 4/4, 2008.


Honorable Judith D. McConnell,
Vice-Chairperson of the Commission on
Judicial Performance

¹ The commission has been apprised by the presiding judge of the Orange County Superior Court that Judge Brooks has 128 days of accrued vacation leave and that he is authorized to take that leave after his last day presiding on the bench.